# DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

# Adoption of Chapter 144 Hawaii Administrative Rules

June 1, 1999

### SUMMARY

Chapter 144 of Title 3, Hawaii Administrative Rules, entitled "Restrictive Purchase of Service", is adopted.

# HAWAII ADMINISTRATIVE RULES

# TITLE 3

# DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

# SUBTITLE 11

# PROCUREMENT POLICY BOARD

# CHAPTER 144

# RESTRICTIVE PURCHASE OF SERVICE

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#### SUBCHAPTER 1

#### PURPOSE AND SCOPE

§3-144-101 Purpose. The purpose of this chapter is to implement section 103F-403, HRS, which establishes the restrictive purchase of service method of procurement, by providing rules and procedures for the use of this method of procurement. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)

- §3-144-102 <u>Scope</u>. (a) The restrictive purchase of service method of procurement may be used when:
  - (1) The head of a purchasing agency makes a written determination that there is a basis for restricting the purchase to a purchase from one provider;
  - (2) The chief procurement officer approves the restrictive purchase determination in writing; and

(3) The term of the proposed contract does not exceed two years, or, upon a written finding of good cause by the chief procurement officer, three years. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)

#### SUBCHAPTER 2

#### CORE PROCEDURES

- §3-144-201 <u>Procedure for requesting restrictive</u> <u>purchase of services</u>. (a) In order to initiate a restrictive purchase of services procurement, the head of the purchasing agency shall submit a written request for restrictive purchase of service to the chief procurement officer together with a notice of restrictive purchase.
- (b) Rush review. If a rush review of a request is needed, a separate memorandum explaining and justifying the reason for the rush review shall be submitted with the request and proposed notice.

  [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)
- §3-144-202 Review of request and proposed notice by chief procurement officer. (a) After the purchasing agency submits its request for restrictive purchase and notice of restrictive purchase, the chief procurement officer shall promptly review both to verify that the request and notice comply with the requirements of section 103F-403, HRS, and this chapter. Upon verifying compliance, the chief procurement officer shall approve the request and the notice in writing, and return the approval, the request, and the notice to the purchasing agency.
- (b) <u>Disapproval of request and notice</u>. If the chief procurement officer finds that either the

request or the notice fails to comply with the requirements of section 103F-403, HRS, or this chapter, then the request and notice shall be disapproved. Upon disapproval, the chief procurement officer shall return the request and notice to the purchasing agency together with a written explanation for the disapproval.

- (c) Resubmission after disapproval. When the chief procurement officer disapproves a request and notice, the purchasing agency may attempt to address the disapproval and resubmit the request and notice. Alternately, the purchasing agency may abandon the intended purchase altogether, or pursue another more appropriate method of procurement. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)
- §3-144-203 Posting of notice of restrictive purchase. (a) After the chief procurement officer approves the request for restrictive purchase and notice of restrictive purchase, the purchasing agency shall post a copy of the notice for five working days in an area accessible to the public, at least ten working days prior to any action to finalize the award of the contract.
- (b) Required newspaper publication. A copy of the notice of restrictive purchase shall be published by the purchasing agency at least once in a newspaper of general circulation on the island or in the locality in which the health and human services are to be provided. The date of the last newspaper publication shall be at least ten working days prior to any action to finalize the award of a contract.

  [Eff JUN 19 1999] (Auth:

  HRS § 103F-106) (Imp: HRS § 103F-403)
- §3-144-204 Protest of restrictive purchase. Protests to a restrictive purchase shall be made under the procedures established under chapter 3-148. Any protest received by the deadline set in the notice of restrictive purchase shall be addressed under the

procedures established under chapter 3-148. All documents relating to the protest, including a written summary of the disposition of the protest, shall be maintained with the restrictive purchase of service file and included in the contract data base by the purchasing agency. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)

§3-144-205 Negotiation of contract. After the deadline for protests has passed and either no protest was filed or any protest that was filed was resolved in the purchasing agency's favor, the purchasing agency may conduct negotiations as to any contract details that were not disclosed in the notice of restrictive purchase or in the request for restrictive purchase. Details that were disclosed in either the notice or the request should not be significantly changed in the negotiation of the contract for the restrictive purchase of services. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)

### SUBCHAPTER 3

#### CONTENT REQUIREMENTS

§3-144-301 <u>Contents of request</u>. A request for restrictive purchase of services shall be made in writing, and shall include all of the following:

- (1) The determination by the head of the purchasing agency that an adequate basis for a restrictive purchase of services exists;
- (2) A brief description of the circumstances that justify the restrictive purchase;
- (3) A brief description of the health and human services required, and the approximate amount of funds budgeted for the purchase of the services;

- (4) The proposed contract period;
- (5) The provider that the purchasing agency proposes to provide the required services and any other material information the purchasing agency deems advisable to include; and
- (6) A certification by the head of the purchasing agency that the information provided in the request is true and correct. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)
- §3-144-302 <u>Basis for restrictive purchase</u>. (a) An adequate basis for a restrictive purchase of service exists when the head of a purchasing agency determines that circumstances constituting good cause for the purchase exist, including but not limited to any of the following:
  - (1) Only one provider can provide the services needed in a particular geographic area within a county;
  - (2) Only one provider can provide services with a unique cultural approach designed for a limited target group;
  - (3) Only one provider satisfies limitations imposed by the source of funds for the procurement, such as in the case when a particular provider is specified by federal law; or
  - (4) Only one provider has responded to a request for proposals issued in compliance with the procedures established in section 3-143-609.
- (b) <u>Inadequate Justifications for Restrictive</u>

  <u>Purchase</u>. None of the following circumstances alone shall constitute an adequate basis for a restrictive purchase of services:
  - (1) The mere fact that a particular provider is or has been furnishing services to a purchasing agency does not constitute evidence that the

- provider is the only source for the type of service required;
- (2) The potential loss of funds at the end of a fiscal year shall not be a basis for restrictive purchase of service; or
- (3) A purchasing agency's failure to plan ahead sufficiently in order to issue a request for proposals and conduct a competitive purchase of services. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-403)

§3-144-303 <u>Contents of notice</u>. The notice of restrictive purchase shall include all of the following:

- (1) A statement that the purchasing agency intends to make a restrictive purchase of health and human services without issuing a request for proposals;
- (2) The nature of services to be provided, the name of the provider to be issued the contract, the dollar amount of the contract, and any other material information the purchasing agency deems advisable to include;
- (3) The proposed date on which the contract is to be awarded;
- (4) A statement indicating that any person may file written protests under the procedures established under chapter 3-148 to the issuance of the proposed contract;
- (5) The address of the person or purchasing agency with whom the protests are to be filed; and
- (6) The date by which the protests are to
   be filed. [Eff JUN 19 1999] (Auth:
   HRS § 103F-106) (Imp:
   HRS § 103F-403)

### SUBCHAPTER 4

### ALLOWABLE COMMUNICATIONS

 $\S\S3-144-401$  to 3-144-500 (Reserved).

#### SUBCHAPTER 5

#### EXPEDITING PROCEDURES

 $\S\S3-144-501$  to 3-144-600 (Reserved).

#### SUBCHAPTER 6

#### MISCELLANEOUS PROCEDURES

- §3-144-601 Requests for information for restrictive purchase of service. (a) A purchasing agency may at any time prepare a request for information in order to facilitate the purchasing agency's planning and to determine the appropriateness of making a restrictive purchase of services. Requests for information may be written, oral, or issued through electronic media or any combination of these methods, and may be sent to any knowledgeable person or entity the purchasing agency deems advisable.
- (b) <u>Permissible subjects</u>. Requests for information may address any subject relevant to a planned or proposed restrictive purchase of service, including but not limited to the following:
  - (1) The objective of the procurement;
  - (2) The target population or clients to be served;
  - (3) The services the purchasing agency anticipates may be necessary to achieve the outcome or objective; or

- (4) Service specifications, feasibility, viability, or cost.
- (c) Form of request. In addition to a description of the information being sought, and the procedure for responding, a request for information shall include:
  - (1) A statement that participation is optional and is not required to respond to a subsequent procurement;
  - (2) A statement that the purchasing agency reserves the right to adopt or not adopt any recommendations presented in the response to the request for information; and
  - (3) A statement that neither the purchasing agency nor the party responding has any obligation under the request for information. [Eff JUN 19 1999] (Auth: HRS §§ 103F-106, 103F-203) (Imp: HRS §§ 103F-203, 103F-403)
- §3-144-602 <u>Restrictive purchase of service</u> record of procurement actions. (a) The procurement officer of the purchasing agency shall maintain records by fiscal year of all restrictive purchase of service procurements made for a minimum of the past five fiscal years.
- (b) Annual reports of restrictive purchase procurements. By the fifteenth day of August of each year, the heads of purchasing agencies shall make reports to the administrator of all restrictive purchase of service procurements made by their respective agencies for the immediately preceding fiscal year. The report shall be made in the format prescribed by the administrator.
- (c) Annual consolidated report. By the first day of October of each year, the administrator shall make a consolidated report of all restrictive purchase of service procurements made during the immediately preceding fiscal year. A copy of this report shall also be sent to the procurement policy board.

[Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS §§ 103F-301, 103F-403)

### DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Chapter 144, Hawaii Administrative Rules, on the Summary Page dated June 1, 1999, was adopted on June 1, 1999, following public hearings held on May 11, 12, 18, 19, 20, 1999 after public notice was given in the Hawaii State and County Public Notices on April 5, 1999.

The adoption of chapter 144 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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Deputy	Attorney	General

JUN 09 1999 Filed